

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Shasta)

TAL REDDING, LLC,

Plaintiff, Cross-defendant and
Appellant,

v.

CHEESECAKES UNLIMITED, INC. et al.,

Defendants, Cross-complainants and
Respondents;

THOMAS A. LYNCH,

Cross-defendant and Appellant.

C082078

(Super. Ct. No. 178556)

This is a breach of contract action arising out of a commercial lease involving a restaurant in Redding, California. The restaurant, Cheesecakes Unlimited, Inc., moved to another part of town approximately four months before the expiration of a 10-year lease. TAL Redding, LLC (TAL) filed an action for breach of contract against

Cheesecakes Unlimited, Inc., Nicholas Parker, and Cory A. Gabrielson (collectively Cheesecakes).

Cheesecakes brought a counterclaim against TAL and its sole owner, Thomas A. Lynch. A bench trial culminated in a judgment that TAL recover \$29,315 in unpaid rent and common area maintenance (CAM) expenses from Cheesecakes and that Cheesecakes recover nothing from TAL or Lynch. The trial court determined neither TAL nor Cheesecakes prevailed for purposes of attorney fees. However, the trial court awarded attorney fees to Lynch limited to his defense of the Cheesecake's theory that TAL was merely an alter ego of Lynch. Every party appealed the judgment, but Cheesecakes subsequently abandoned its appeal.

On appeal, TAL argues (1) insufficient evidence supported the trial court's determination TAL's claim for deconstruction expenses was barred by the doctrine of laches, (2) Cheesecakes breached the lease by failing to pay monthly estimated CAM charges, and (3) the trial court erred in finding Cheesecakes had not breached the lease by failing to pay monthly estimated CAM reconciliation expenses for 2012 and CAM expenses for 2013.

Lynch argues that (4) the trial court allowed unreasonably few attorney hours in its attorney fee award, and (5) the trial court abused its discretion in selecting an unreasonably low lodestar multiplier for attorney fees.

As to TAL's appeal, we conclude substantial evidence supports the trial court's application of the doctrine of laches to TAL's claim for deconstruction expenses. Regarding TAL's arguments to the inadequacy of damages awarded for its claims for CAM expenses against Cheesecakes, we determine such arguments have not been preserved for appeal in the absence of a motion for new trial based on inadequate damages.

As to Lynch's appeal, we discern no abuse of discretion in the trial court's detailed reasoning in support of its attorney fee award to Lynch. We reject Lynch's assertion of an abuse of discretion in reducing the number of compensable attorney fee hours. As the trial court pointed out, the sole legal issue against which Lynch had to defend was simple and required only de minimus effort to defend against. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The 10-Year Lease

In July 2003, Cheesecakes signed a 10-year commercial lease with Safeway, Inc. to operate a sit-down restaurant at Cypress Pointe Shopping Center in Redding, California. Parker and Gabrielson each signed a personal guarantee. Cheesecakes opened its restaurant in March 2004.

Safeway sold the property rights to the lease to TAL in 2005. However, Safeway continued to operate its grocery store at Cypress Pointe Shopping Center. Safeway also continued to maintain some common areas such as the parking lot, walkways, and landscaping areas. For maintenance of these areas, Safeway charged a management fee to TAL.

From 2005 through 2011, Barbara Altomare worked as TAL's property manager. Parker testified that Cheesecakes did not regularly receive yearly reconciliation statements for CAM charges as required by the lease. Parker was frustrated by unexplained 30 percent increases in the CAM charges in 2006-2007 and again in 2013. He asked for explanations but could not recall the responses during trial.

During 2008 and 2009, Cheesecakes encountered financial difficulties and fell behind on rent payments. Cheesecakes and TAL amended the lease in May 2010, and Cheesecakes brought its rent payments current. While Altomare was property manager,

TAL assessed Cheesecakes a 15 percent administrative fee but not a property management fee.

West Valley Properties, Inc. (West Valley) assumed management of the Cypress Pointe Shopping Center in February 2012. West Valley determined Cheesecakes was current on rent and CAM charges as of December 2012. In 2013, Cheesecakes received a CAM reconciliation statement that imposed a 30 percent increase on its annual CAM charges. Cheesecakes believed it was being wrongly charged for roof repairs and exterior painting. Cheesecakes also protested the newly imposed administrative fee of 15 percent on top of Safeway's CAM charges to TAL. Cheesecakes continued to pay rent and CAM charges at the 2012 levels.

In May 2013, Cheesecakes gave notice to TAL that it would not renew the lease when its term expired in February 2014. In mid-September 2013, Cheesecakes closed its restaurant in Cypress Pointe Shopping Center and opened at a new location elsewhere in Redding. On October 16, 2013, Redding gave Cheesecakes notice that it would terminate the lease if Cheesecakes did not cure defaults listed in the notice. On November 1, 2013, Cheesecakes turned over the keys to the premises to TAL. Thereafter, Cheesecakes paid no further rent during the four months remaining on the lease.

Action by TAL and Cross-Action by Cheesecakes

In October 2013, TAL filed an action for breach of contract against Cheesecakes. TAL's original complaint did not request that Cheesecakes return the premises to an empty shell.

In November 2013, TAL informed Cheesecakes it needed to "restore the premise[s] to the original delivered condition" – which TAL considered to be an empty shell. Cheesecakes responded that it had no obligation to restore the premises to a shell and restoring it to a shell "would appear to be an unnecessary waste." On December 10,

2013, TAL responded that it would allow Cheesecakes a week to conduct an inspection of the premises for purposes of preparing an estimate for the deconstruction work. TAL indicated it was “eager” to begin the work in about a week’s time. The parties continued to exchange communications about the deconstruction to a shell. In January 2014, TAL changed its position and requested that Cheesecakes delay on the deconstruction. TAL had indicated a prospective tenant was interested in leasing the space for a new restaurant.

In mid-December 2013, Cheesecakes filed a cross-complaint for breach of contract and accounting against TAL and Lynch.

In February 2014, TAL filed its first amended complaint in which it added a cause of action for declaratory relief and demanded that the premises be restored to “shell condition.”

In December 2014, TAL next communicated with Cheesecakes regarding the deconstruction. TAL informed Cheesecakes it now planned to subdivide the premises into three separate spaces, it wanted to retain the grease trap for one of its prospective tenants, and items originally included in its deconstruction bid had been removed. Shortly thereafter, Cheesecakes proposed its own contractor for the deconstruction work and to remove fixtures at no cost to TAL, but stated it would not return the space to an empty shell.

Trial

At the time of trial, TAL’s demand shifted to exclude removal of the grease trap. TAL also appeared to consider retained restaurant equipment, fixtures, and full bathrooms left behind by Cheesecakes to be a substantial savings for the next tenant.

The matter proceeded to a bench trial and culminated in three rulings that separately analyzed the parties' liability claims, scope of damages, and entitlement to attorney fees. Ultimately, the trial court made the following findings:

TAL's claim for breach of lease. The trial court found Cheesecakes ceased operating on the premises before the expiration of the lease's term and was therefore in default of the lease. TAL did not fail to mitigate its damages even though it was unable to find another tenant within the remainder of the lease period. Accordingly, TAL was entitled to recover unpaid base rent in the total amount of \$28,580 for the unexpired term during which time Cheesecakes was not operating at the premises. Cheesecakes was not entitled to return of its \$6,496 security deposit, but had to pay an additional \$735 for removal of paint from the door and repair of signage.

TAL's claim for unpaid CAM charges. The trial court found TAL did not meet its burden of proof for its claims of (1) CAM charges for exterior painting, (2) CAM charges for roof repair, (3) property management fees of West Valley, and (4) "other unpaid CAM charges."

TAL's claim for property management fees. The trial court determined Cheesecakes was not responsible for paying the 15 percent administrative fee TAL added on to the Safeway CAM. The trial court concluded this was a charge that "was not provided for in the Lease Agreement." However, TAL was not required to pay the amount back because the statute of limitations barred claims for charges prior to February 2010 and the doctrine of laches barred claims relating to the period from May 2010 through 2011. As the trial court noted, "Cheesecakes acquiesced to the charges by accepting the charges and making payments every month based on the accepted charges." Further barring recovery, the trial court found TAL "has failed to meet its burden of proving what amount remains unpaid."

TAL and Cheesecake's requests for declaratory relief regarding deconstruction expenses. The trial court determined the doctrine of laches barred TAL's claim that Cheesecakes was obligated to deconstruct the premises to shell condition.

Damages awarded. The damages awarded to TAL totaled \$29,315 for unpaid rent, removal of paint from the door, and to repair signage. In a detailed recitation of the evidence introduced, the trial court found TAL had not proved any other damages.

The trial court determined Cheesecakes was not entitled to any damages for its breach of contract claim and noted Cheesecakes had withdrawn its claim for an accounting.

Attorney fees awarded only to Lynch. Although all parties requested contractual attorney fees, the trial court awarded fees only to Lynch as prevailing on the cross-complaint filed by Cheesecakes. The trial court awarded Lynch \$12,250 in attorney fees and \$703.23 in costs.

Appeals

None of the parties filed a motion for new trial based on inadequate or excessive damages. TAL timely filed a notice of appeal from the judgment. Cheesecakes filed a notice of cross-appeal, but abandoned the cross appeal prior to briefing. Lynch timely filed a notice of appeal from the order awarding him attorney fees.

APPEAL BY TAL

I

Applicability of Laches to TAL's Claim for Deconstruction Expenses

TAL argues insufficient evidence supports the trial court's finding that the claim for deconstruction expenses was barred by the doctrine of laches. We are not persuaded.

A.

The Doctrine of Laches

The doctrine of laches bars legal claims that have been surrendered through inaction or acquiescence. “ ‘Laches is based on the principle that those who neglect their rights may be barred, in equity, from obtaining relief. . . . The elements required to support a defense of laches include unreasonable delay and either acquiescence in the matter at issue or prejudice to the defendant resulting from the delay. . . . Generally, laches is a question of fact, but where the relevant facts are undisputed, it may be decided as a matter of law.’ (City of Oakland [v. Oakland Police & Fire Retirement System (2014)] 224 Cal.App.4th [210,] 248, citations omitted; see also *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 67 [‘Generally, a trial court’s laches ruling will be sustained on appeal if there is substantial evidence to support the ruling’].) ‘Under appropriate circumstances, the defense of laches may operate as a bar to a claim by a public administrative agency . . . if the requirements of unreasonable delay and resulting prejudice are met.’ (*Robert F. Kennedy Medical Center v. Belshe* (1996) 13 Cal.4th 748, 760, fn. 9.)” (*Krolikowski v. San Diego City Employees’ Retirement System* (2018) 24 Cal.App.5th 537, 568.) As TAL properly acknowledges, “a trial court’s laches ruling will be sustained on appeal if there is substantial evidence to support the ruling.” (See *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 67.)

B.

Trial Court’s Findings Regarding TAL’s Deconstruction Demands

The trial court found the facts of the case warranted the application of the doctrine of laches to TAL’s claim for the cost of deconstructing the interior leased space to an empty “shell.” Specifically, the trial court found:

“The letters [between TAL and Cheesecakes] demonstrate an ever-shifting position on the part of TAL Redding relating to the extent to which deconstruction, if any, was being demanded. The deconstruction demands shifted depending on the prospective tenant du jour. Trial testimony demonstrates that [Lynch] still was not certain even at the time of trial what portion of the Premises he desired to be deconstructed. Johnston^[1], who performed the deconstruction work, testified that some walls included in his cost break-down might not be removed, and other items may not be deconstructed, depending on what a new tenant may want to use.

“The delay in asserting the right to have the Premises deconstructed was not reasonable or excusable. The delay was based on the inability of [Lynch] to make up his mind as to whether he wanted the premises fully deconstructed, including the removal of the grease trap, or wanted to market the premises with the restaurant ‘as is’, or something in between. It was unreasonable for [Lynch] to expect the deconstruction to be done by Cheesecakes on a delayed timeline of his choosing and to pick and choose at various times what he wanted deconstructed, if anything, subject to changing his mind depending on prospective tenants viewing the Premises.

“[TAL] acquiesced in the act about which it now complains—that the premises were not deconstructed down to the shell condition. [Lynch]’s purpose in delaying the deconstruction, and delaying the decision as to the extent to which he would demand deconstruction, was for the purpose of making the Premises more marketable to prospective tenants. [¶] Cheesecakes is prejudiced as a result of the delay because the opportunity to deconstruct in a manner which was cost-effective to Cheesecakes has been lost. [¶] The Court finds [Lynch] was not acting in a retaliatory manner toward

¹ Eric Johnston, TAL’s contractor.

Cheesecakes in his various deconstruction demands. He simply could not make up his mind about what he wanted Cheesecakes to deconstruct, if anything.”

C.

Sufficiency of the Evidence

Substantial evidence supports the trial court’s factual finding that TAL waffled in its demands regarding deconstruction of the premises, even during trial. In reaching this conclusion, we note that, “[a]s has been said many times and by many courts, when the ‘findings of fact are challenged in a civil appeal, we are bound by the familiar principle that “the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below. [Citation.]’ (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.) ‘In applying this standard of review, we “view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. . . .” [Citation.]’ (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1096.) ‘ “Substantial evidence” is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.’ (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) We do not reweigh evidence or reassess the credibility of witnesses. (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622.) We are ‘not a second trier of fact.’ (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.)” (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245-1246.)

The scope of the deconstruction work to be performed was unclear and changed over time. Shortly after Cheesecakes vacated the premises, TAL indicated it wanted the space restored to shell condition. On December 10, 2013, TAL confirmed its intent to return the premises to shell condition and stated it was eager to begin the work as early as

the next week. Cheesecakes responded that it had not heard back regarding its request for a list of the restaurant equipment that TAL wanted removed from the premises and asked for clarification on the restaurant equipment issue. After not receiving a list or explanation of the specific restaurant equipment to be removed from the premises, Cheesecakes followed up with an itemized list of equipment it agreed to remove. Cheesecakes also had questions about what to do with certain items (window blinds, hot water heater, drink equipment) to comply with the demand to demolish the interior. When TAL responded on January 6, 2014, TAL proposed the parties agree on the cost of full demolition and Cheesecakes post money to cover the cost if necessary. TAL indicated deconstruction might not be necessary if it could sign a tenant who was interested in using the space as a restaurant. Cheesecakes did not agree to the proposal, disputed its obligation to pay to deconstruct the premises, and confirmed TAL's request to delay removal of the restaurant equipment.

In November 2014, the unresolved matter resurfaced when Cheesecakes' counsel pointed out TAL's original complaint did not request deconstruction as a remedy. TAL's demand on the issue was unclear in its first amended complaint where it stated that it "deferred demanding restoration of the Premises to shell condition, but seeks herein declaratory relief concerning the full rights and duties related thereto" During trial, TAL's attorney stated: "I can't stand before the Court as an officer of the Court and with a straight face say they owe – Cheesecakes still owes \$62,000 for removing all this stuff, when I know full well that a tenant is now able to utilize some of that." Lynch testified that at one point TAL demanded that the grease trap be removed, but at the time of trial the grease trap no longer needed to be removed. Thus, the record supports the trial court's finding TAL's demands regarding deconstruction were ambiguous and shifting.

The record also supports the trial court's finding TAL's shifting positions regarding deconstruction prejudiced Cheesecakes. During the exchange of communications between the parties, TAL's counsel recognized that letting Cheesecakes secure its own bid for the deconstruction would allow Cheesecakes to mitigate its damages with a lower cost. And the evidence shows Cheesecakes pointed out that TAL "deprived Cheesecakes by delay in making that request of the opportunity to deconstruct the premises themselves at a lesser expense." In short, the delays and shifting positions of TAL precluded Cheesecakes from determining what exactly was required for the deconstruction.

The trial court properly concluded laches applied because TAL's demands regarding deconstruction shifted before trial and remained unclear even during the pendency of the litigation in the trial court. (*Tustin Community Hospital, Inc. v. Santa Ana Community Hospital Assn.* (1979) 89 Cal.App.3d 889, 904 ["[I]t has been held that delay during litigation may constitute such laches as would bar the granting of relief".]) TAL's indecision from December 2013 through trial in February 2015 warranted the application of laches to its claim for deconstruction.

We reject TAL's assertion that the uncertainty related only to the cost of deconstruction. Certainly, the cost was uncertain throughout the entire time TAL indicated it was interested in deconstruction to some extent. However, the uncertainty came from TAL's inability to pin down exactly what it wanted. Even during trial, TAL's contractor, Eric Johnston, testified he was uncertain about the deconstruction expenses because he did not know whether he would be able to offset the cost by retaining the refrigeration units.

We also reject TAL's assumption that the trial court's application of laches to the deconstruction claim "impliedly" found a duty of Cheesecakes to deconstruct. The

procedural bar of laches obviated the need for the trial court to address the merits of a claim.

II

Disputed CAM Charges

The gravamen of TAL's second argument is difficult to discern. TAL's argument heading asserts that "the trial court erred in concluding that Cheesecakes had not breached the lease by failing to pay monthly estimated CAM charges." TAL reasons the trial court erred in deeming presentation of the correct amount due as a condition precedent to Cheesecakes' contractual obligation to pay. Thus framed, the argument appears to be a question of law regarding whether Cheesecakes breached the lease. In its reply brief, however, TAL recharacterizes the argument as an evidentiary one where it "contends that the judgment that [TAL] failed to prove its damages is not supported by substantial evidence based on an erroneously imposed burden of proof."

The interpretation of a contract, including whether it contains conditions precedent, presents a question of law. (*Colaco v. Cavotec SA* (2018) 25 Cal.App.5th 1172, 1182.) To the extent TAL's argument presents a question of law, we deem the argument forfeited for lack of any citation to legal authority in support of its argument in TAL's opening brief. "When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 (*Allen*).) Insofar as TAL intends to raise a legal issue regarding breach of contract or allocation of the burden proof, the argument is deemed forfeited. (*Ibid.*; see also *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1157 ["Allocation of the burden of proof presents an issue of statutory construction subject to de novo review"].)

To the extent TAL’s argument challenges the sufficiency of the evidence in support of the trial court’s refusal to award damages for disputed CAM charges, the issue has not been preserved for appeal. TAL did not bring a motion for trial on grounds of inadequate damages. “[A] failure to move for a new trial ordinarily precludes a party from complaining on appeal that the damages awarded were either excessive or inadequate, whether the case was tried by a jury or a court without a jury. (. . . *Mendoyoma, Inc. v. County of Mendocino*, 8 Cal.App.3d 873, 877 (nonjury trial, inadequate damages) . . .) The rule is a sound one. . . . [T]he power to weigh the evidence and resolve issues of credibility is vested in the trial court, not the reviewing court. (*Schroeder v. Auto Driveaway Co.*, *supra*, 11 Cal.3d 908, 919.) Consequently, where the ascertainment of the amount of damage requires resolution of conflicts in the evidence or depends on the credibility of witnesses, the award may not be challenged for inadequacy or excessiveness for the first time on appeal. To permit a party to do so without a motion for new trial would unnecessarily burden reviewing courts with issues which can and should be resolved at the trial court level. (*Schroeder v. Auto Driveaway Co.*, *supra*, 11 Cal.3d 908, 919.)” (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 122 (*Glendale*).)

For lack of a motion for new trial on grounds of inadequate damages, we conclude TAL’s argument regarding the trial court’s inadequate award of CAM charges is not cognizable on appeal.²

² Our conclusion that TAL’s argument is not cognizable on appeal, obviates the need to reach the question of whether it is justiciable in light of TAL’s observation that “[a]rguably, this issue is moot”

III

CAM Reconciliation Expenses for 2012 and CAM Expenses for 2013

TAL contends that “the trial court erred in concluding that [TAL] had not *proved* that [Cheesecakes] had not paid CAM reconciliation expenses for 2012 or CAM expenses for 2013.” (Italics added.) To this end, TAL points out evidence it believes compelled an award of damages for Cheesecake’s failure to pay certain CAM charges. In its reply, TAL quotes *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 at page 774, to assert that “[t]he law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation.”

This argument has not been preserved for appeal for lack of a new trial motion. A challenge to computation of damages as inadequate requires a motion for new trial to preserve the issue for appeal. (*Glendale, supra*, 66 Cal.App.3d 101, 122) Although TAL may view the evidence as undisputed and unambiguous, the trial court found the documents relied upon by TAL to prove damages were not self-explanatory. The trial court specifically found that, “[w]ithout testimony explaining the documents, the Court would be speculating as to what the figures represent.” The trial court also rejected “attempts [by TAL’s counsel] to add the evidence by virtue of certain calculations based on certain assumptions about which there is no evidence.” Because TAL’s appellate challenge is an evidentiary-based one, it was required to first move for new trial based on inadequate damages. (*Ibid.*) For lack of a motion for new trial, we decline to consider the issue.

In the opening brief, TAL’s argument regarding the CAM charges includes the assertion the trial court erred in denying the 15 percent management fee on CAM charged by Safeway and this “question presented is therefore one of interpretation of contract

between the parties, a question of law for this court.” As with the prior argument, TAL’s opening brief cites no legal authority on the issue. For lack of any legal authority in support, we deem the argument forfeited. (*Allen, supra*, 234 Cal.App.4th at p. 52.)

APPEAL BY LYNCH

IV

Attorney Fees Awarded to Lynch

Lynch contends that “[t]he trial court made an error in limiting the amount of fees to be awarded to only those attributable to the alter ego theory of recovery.” We are not persuaded.

A.

Lynch’s Defense Against the Alter Ego Theory of Liability

Cheesecakes sued TAL and Lynch for breach of the lease and for an accounting. The claim of Lynch’s liability was premised on the alter ego theory that Lynch was personally responsible for TAL’s conduct with respect to Cheesecakes. Reflecting the unity of interest in the defense, TAL and Lynch were represented by the same attorney through much of the litigation. During trial, the testimony relating to Lynch’s personal liability for TAL’s actions took up only a small percentage of the time. In its statement of decision, the entirety of the trial court’s discussion regarding Lynch’s personal liability was as follows:

“Issue 9. Whether [Lynch] is personally liable. The Court finds that [Lynch] is not the alter ego of [TAL]. The Court finds [Lynch] did not engage in any conduct which would render him personally liable for damages in this case.” (Formatting omitted.)

Regarding Lynch’s defense, the trial court made the following findings: “The alter ego aspect of the litigation was *de minimus* from the standpoint of time and effort. It may be nearly impossible to parse out the *de minimus* attorney fees attributable to the

alter ego aspect of the litigation. However, to the extent it can be demonstrated that attorney fees were incurred solely in defense of the alter ego theory of recovery, Lynch is entitled to his day in court to present such a request and the basis for determining that the requested fees were incurred solely in defense of the alter ego theory of recovery.” The trial court separated Lynch’s defense of the alter ego theory of recovery from other aspects of the defense against the claims by Cheesecakes based on the finding that neither TAL nor Cheesecakes was a prevailing party on its various claims against each other.

In awarding fees to Lynch, the trial court found that “the lodestar figure attributable to the defense of Lynch as to the alter ego theory of recovery is the amount of time in trial and post-trial motions and hearings, including the amount of time devoted to enforcing the right to reimbursement of attorney’s fees. The Court finds 70 hours to be reasonable. . . . The lodestar amount is \$17,500. [¶] The Court exercises its discretion and adjusts the lodestar figure downward by thirty percent. The downward adjustment is justifiable for the following reasons: (1) the nature of the litigation was not complex or difficult, but was made unnecessarily difficult due to TAL[’s] attempt to recover more than that to which it was entitled; (2) Thomas A. Lynch was the principal of [TAL] directing the litigation; (3) the amount at stake in the litigation was not relatively great; (4) the Court considers the skill required and employed in handling the litigation; and (5) there was minimal effort necessary to succeed in defeating the alter ego theory of recovery, which was clearly not the gravamen of the litigation.” Based on these considerations, the trial court awarded Lynch \$12,250 in attorney fees and \$703.23 in costs.

B.

Trial Court Discretion in Awarding Attorney Fees

Trial courts have broad discretion in determining the proper amount of attorney fees to award to a party. “Once a trial court determines entitlement to an award of attorney fees, apportionment of that award rests within the court’s sound discretion. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 687; *San Dieguito Partnership v. San Dieguito River Valley Regional etc. Authority* (1998) 61 Cal.App.4th 910, 920, disapproved on another ground in *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1097, fn. 5.) We review the court’s decisions for abuse of discretion. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) The court abuses its discretion whenever it exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish that discretion was clearly abused and a miscarriage of justice resulted. (*Ibid.*; *Silver v. Boatwright Home Inspection, Inc.* [(2002)] 97 Cal.App.4th [443,] 449.)” (*Carver v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 505.)

Here, Lynch argues the trial court’s award of fees was inadequate because it was limited only to the defense against the alter ego theory of liability. In Lynch’s view, he “had to defend the entire breach of contract claim not just the ‘alter ego’ allegation” We are not persuaded.

Lynch shared a unity of interest with TAL in defending against the breach of lease claim brought by Cheesecakes. Indeed, Lynch and TAL shared the same attorney during much of the litigation. And “it was clear to the Court during trial that Lynch was the sole voice of [TAL] in the litigation decision making throughout the litigation.” Regarding the breach of lease claim brought by Cheesecakes, the trial court noted that “[t]he time and expense expended by [TAL] in pursuing the second amended complaint was the

same time and expense expended by [TAL] in defending the cross-complaint.” This time and expense by TAL did not yield an unqualified victory. The trial court concluded that “[i]n comparing the extent to which each party has succeeded and failed to succeed in its contentions, the Court finds there is no prevailing party in this action.” In sum, Lynch now seeks an award of fees for legal representation already secured by TAL and for which TAL was not the prevailing party.

The *only* aspect of trial in which a party prevailed was Lynch’s defense against the alter ego theory of liability. And the trial court awarded attorney fees for that defense. The trial court did not abuse its discretion in limiting fees to those relating to the sole legal issue on which Lynch prevailed.

We are not persuaded by Lynch’s reliance on *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124 (*Reynolds*). The *Reynolds* court held that a defendant sued under the alter ego theory of liability may recover attorney fees even if not a signatory to the contract on which the action is premised. (*Id.* at p. 129.) In essence, the question presented in *Reynolds* concerned whether the reciprocity provision of Civil Code section 1717³ extended to nonsignatories to a contract when a meritorious breach of contract action would hold them liable. (*Ibid.*) In answering that the nonsignatory defendant could receive attorney fees under section 1717, the California Supreme Court addressed

³ Undesignated statutory references are to the Civil Code.

Section 1717, subdivision (a), provides for reciprocity in attorney fees provisions of a contract by stating in pertinent part that “[i]n any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.”

only the question of entitlement to an attorney fee award – not the proper calculation of an award’s amount. (*Id.* at pp. 128-129.) Lynch’s reliance on *Reynolds* and section 1717 does not aid his argument about the *amount* of the fees awarded to him. Here, Lynch is not contesting his entitlement to attorney fees but only the amount he was awarded.

C.

Scope of the Attorney Fees Award

Lynch next argues that “[t]he trial court’s method of determining the lodestar amount is in error as its finding that 70 hours of time was reasonable was not based on the evidence presented.” We disagree.

In arguing the trial court abused its discretion, Lynch acknowledges that “the appellate court must presume that the trial court did, in fact, do its job and used the attorney records to determine the amount of time” reasonably awarded. The acknowledgment is appropriate because “we presume the court performed its duty” in examining attorney billing records to determine the compensable hours. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324; Evid. Code, § 664.) We further note that “[w]here, as here, the trial court severely curtails the number of compensable hours in a fee award, we presume the court concluded the fee request was padded.” (*Christian Research, supra*, at p. 1325.) Consequently, “[w]e may not reweigh on appeal a trial court’s assessment of an attorney’s declaration.” (*Id.* at p. 1323.)

We determine there was no abuse of discretion in awarding 70 hours of legal representation for what the trial court found to be an issue “of the litigation [that] was *de minimus* from the standpoint of time and effort.” The trial court was within its discretion to determine Lynch’s attorney fees were excessive in comparison with the work necessary to defend only on the issue of the alter ego theory of liability. For example, the trial court could have determined Lynch’s attorney claim of more than 21 hours to

research the single legal issue of personal liability constituted an unnecessary amount of time. And the trial court could have found the excessive nature of Lynch's attorney bills was indicated by the more than 30 hours of time claimed to prepare and argue the issue of attorney fees. And, as we noted above, the issue of the alter ego theory of liability took up only a small amount of time at trial. The trial court, having presided over trial, was in the best position to determine the time required to prepare and defend on a single de minimus issue. The evidence of billing records belies the simplicity of this issue and does not warrant reversal of the trial court's order.

V

Lodestar Multiplier

Lynch next argues that "[t]he trial court's reduction of lodestar amount was not supported by the record and out of line with the purpose of Section 1717." Lynch asserts the trial court's order "unfairly punishes [him] for his involvement in the litigation." The record does not support Lynch's argument. Rather than indicating an animus to punish Lynch, the record demonstrates the trial court declared him to be the sole prevailing party in this multi-party litigation.

The California Supreme Court has recently explained, "The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.' " (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489, quoting *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.)

Here, Lynch did not ask for a lodestar multiplier to increase the award beyond the number of hours claimed. Instead, he merely asserted his attorney fees “should be awarded in full.” The lodestar multiplier was determined by the trial court to require a 30 percent reduction in attorney fees. In applying the lodestar multiplier of 0.7, the trial court explained:

“The Court exercises its discretion and adjusts the lodestar figure downward by thirty percent. The downward adjustment is justifiable for the following reasons: (1) the nature of the litigation was not complex or difficult, but was made unnecessarily complex and difficult due to TAL[’s] attempt to recover far more than that to which it was entitled; (2) [Lynch] was the principal of [TAL] directing the litigation; (3) the amount at stake in the litigation was not relatively great; (4) the Court considers the skill required and employed in handling the litigation; and (5) there was minimal effort necessary to succeed in defeating the alter ego theory of recovery, which was clearly not the gravamen of the litigation.”

Based on the trial court’s articulation of multiple reasons for the downward departure, we reject Lynch’s characterization of the lodestar multiplier as punishment for his participation in the litigation. Lynch was not being punished. He was also not faulted for “improper” conduct. Instead, he *was* awarded fees – just not to the extent to which he believes he was entitled.

The trial court determined Lynch over-litigated a straightforward issue. Although Lynch points to a \$100,000 demand in the cross-complaint, this multiparty litigation yielded only \$29,315 in unpaid rent and common area maintenance expenses from Cheesecakes. The trial court did not ignore Lynch’s prerogative to mount a defense, but recognized it did not need to countenance a defense disproportionate to the nature of the issue.

We are not persuaded by Lynch’s reliance on *Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266 (*Mountjoy*).) In *Mountjoy*, the trial court awarded attorney fees but reduced the claimed hours by 70 percent “because well over 70 percent of the billing entries suffered from one or more flaws.” (*Id.* at p. 281) This court reversed and explained that “[t]he problem with this approach is that there appears to be no reasonable basis for the conclusion that the total hours included in the 70 percent plus time entries that were flawed in one or more ways was even reasonably close to 70 percent of the total time claimed.” (*Ibid.*) In other words, mere billing flaws do not establish that the billed time was unnecessary or poorly spent.

In contrast to *Mountjoy, supra*, 245 Cal.App.4th 266, the trial court in this case did not reduce the attorney fees award based on an arbitrary measure. Instead, the trial court based its reduction in the number of hours claimed by Lynch’s attorney on substantive considerations. These considerations included the trial court’s determination that the sole legal issue for which hours were compensable was a simple one and required only a de minimus amount of time and effort. The trial court’s determination was not arbitrary or capricious but based on substantive considerations for which the court had first-hand knowledge.

VI

Section 1717

Finally, Lynch argues his right to attorney fees under section 1717 “is completely destroyed by the trial court’s minimal award in this case.” We reject the argument.

Section 1717 serves only to make contractual provisions for attorney fee shifting reciprocal among parties to the contract. As the California Supreme Court has summarized, “[s]ection 1717 was enacted to establish mutuality of remedy where contractual provision makes recovery of attorney’s fees available for only one party

[citations], and to prevent oppressive use of one-sided attorney’s fees provisions.” (*Reynolds, supra*, 25 Cal.3d at p. 128.) Section 1717 does not address the measure or amount of attorney fees. (See *id.* at p. 129 [noting section 1717 only “refers to fees ‘incurred to enforce the provisions of [the] contract’ ”].) Consequently, section 1717 does not aid Lynch in arguing the *amount* of fees awarded must be reversed. Instead, as we have explained, we conclude the trial court properly exercised its discretion in awarding attorney fees to Lynch.

DISPOSITION

The judgment and post-judgment order awarding attorney fees are affirmed. Cheesecakes Unlimited, Inc., Nicholas Parker, and Cory A. Gabrielson shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

_____/s/
HOCH, J.

We concur:

_____/s/
ROBIE, Acting P. J.

_____/s/
MURRAY, J.